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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/692,869	10/24/2003	Arvo Poldmaa	9764-20US (12866/GW)	1948

570 7590 12/22/2004

AKIN GUMP STRAUSS HAUER & FELD L.L.P.  
ONE COMMERCE SQUARE  
2005 MARKET STREET, SUITE 2200  
PHILADELPHIA, PA 19103-7013

EXAMINER

LEV, BRUCE ALLEN

ART UNIT	PAPER NUMBER
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3634

DATE MAILED: 12/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/692,869

Applicant(s)

POLDMAA, ARVO

Examiner

Bruce A. Lev

Art Unit

3634

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 01 December 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

BRUCE A. LEV  
PRIMARY EXAMINER

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-418)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

***Claims 1-9 are rejected*** under 35 U.S.C. ***102(b)*** as being anticipated by ***de Wilde 4,940,198***.

***de Wilde sets forth*** a bracket comprising a first region (1) capable of attaching to a building; a second region (2) capable of spanning a gutter, and a third region (viewed as the curved corrugation adjacent to the second section) capable of receiving the rung of a ladder; the first region being in the form of a planar sheet metal that is bendable; and including securing points (inclusive of member 5). The applicant should note that product-by-process limitations within apparatus claims (such as "the bracket being moulded") are NOT given patentable weight.

***Claims 1-9 are rejected*** under 35 U.S.C. ***102(b)*** as being anticipated by ***de the UK Patent 2,1 18,236 of Lee et al.***

***Lee et al set forth*** a bracket comprising a first region (18) capable of attaching to a building; a second region (11) capable of spanning a gutter; and a third region (inclusive of members 24 and 25) capable of receiving the rung of a ladder; the first region being in the form of a planar sheet that is "bendable"; and securing points. The applicant should note that product-by-process limitations within apparatus claims (such as "the bracket being moulded") are NOT given patentable weight.

***Conclusion***

Remarks filed December 1, 2004 have been considered but have not been persuasive.

As concerns remarks that the elements of the references cited do not perform the same functions as the elements of the instant invention, the examiner takes the position that the "intended use" of an element and/or an apparatus is not given patentable weight within an apparatus claim. Further, to compare an element of a claimed invention to a member that is not part of the invention (i.e., a gutter) does not constitute proper claim language and/or patentable subject matter. The examiner reiterates the position(s) that since the prior art (as set forth above) discloses elements that are readable upon the structural limitations as set forth in the instant inventions, the outstanding rejections are proper.

**THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

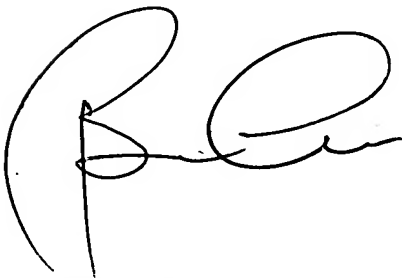
Art Unit: 3634

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bruce A. Lev whose telephone number is (703) 308-7470.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-2168.

December 14, 2004

A handwritten signature in black ink, appearing to read 'B. A. Lev', with a large, stylized 'B' and 'L'.

**Bruce A. Lev**

**Primary Examiner**

**Group 3600**